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ABSTRACT

The Office for Civil Rights (OCR) is a law enforcement agency primarily responsible for ensuring that recipients of federal assistance do not discriminate against students, faculty, or other individuals on the basis of race, color, national origin, sex, handicap, or age. OCR is responsible for enforcing the following Federal civil rights laws: the Civil Rights Act of 1964 (Title VI); the Education Amendments of 1972 (Title IX); the Rehabilitation Act of 1973 (Section 504); and the Age Discrimination Act of 1975. OCR's principal activity is resolving complaints of discrimination. OCR received 3,809 complaints during FY 1991. Most were filed against elementary and secondary schools; 79 percent alleged discrimination in delivery of services; and nearly two-thirds alleged discrimination on the basis of handicap. OCR holds compliance reviews of federal programs, monitors implementation of higher education desegregation plans, and reviews desegregation components of grant applications submitted under the Magnet Schools Assistance Program. OCR also brings enforcement actions against recipients failing to collect civil rights violations and provides technical assistance to facilitate voluntary compliance. FY 1991 priority issues included investigations of discrimination against second-language students in Hawaii, ability-grouping practices in an Illinois district, racial harassment in an Ohio district, and discrimination against pregnant students in Atlanta schools. Other interventions are discussed. (MLH)

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ED 421 804

Annual Report to Congress

Fiscal Year 1991

U.S. Department of Education
Office for Civil Rights

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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FOREWORD

To the Senate and the House of Representatives of the United States of America in Congress Assembled:

The Office for Civil Rights (OCR) is charged with protecting the rights of students to an equal educational opportunity without regard to race, color, national origin, sex, age or handicapping condition. For the past four years, OCR has faced a critical challenge to its ability to fully carry out that mission. During that period, the number of complaints of discrimination filed with OCR has nearly doubled. The rise in complaints, which now exceeds any previous level in OCR's history, shows no signs of abating.

Nevertheless, Congress has failed to fully fund the President's budget requests for OCR in three of the past four fiscal years. As a result, critical program activities, such as compliance reviews and technical assistance, had to be drastically curtailed.

Shortly after taking office in July 1990, I undertook a review of OCR's compliance program. It was clear that to manage effectively its civil rights enforcement responsibilities, OCR needed to establish clear program priorities.

On December 11, 1990, I issued OCR's first National Enforcement Strategy (NES), covering fiscal years (FYs) 1991 and 1992. The NES describes OCR's goals for a balanced, proactive enforcement program. It integrates OCR's policy development, staff training, compliance review, and technical assistance activities with specific high priority civil rights issues.

OCR achieved the highest possible impact from our limited resources during FY 1991 by focusing on the activities and issues outlined in the National Enforcement Strategy. OCR headquarters developed and disseminated both policy and investigative guidance, provided technical assistance on the FY 1991 priority issues and made intensive training on these issues available to regional managers and attorneys.

In spite of the continuing rise in complaint receipts, OCR's regional offices were able to initiate 28 percent more compliance reviews in FY 1991 than the previous year. With careful management of OCR's travel funds, in FY 1991, we were able to provide technical assistance outreach to a broad array of interested groups all over the country.

My review of OCR's operations also led me to believe that certain structural and management changes would lead to enhanced productivity in OCR. We instituted a variety of costcutting efforts, created a system for distributing field resources, realigned regional responsibilities, and increased our technological resources. Planned in FY 1991, we implemented in FY 1992 a reorganization of OCR headquarters to streamline it by eliminating wasteful duplication and overlap and to move resources to more critical functions. As a result of these measures, our enforcement program was substantially strengthened in FY 1991.

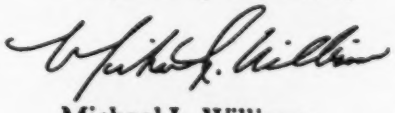
The NES also supports the goals of AMERICA 2000 - the Department of Education's long-range strategy to move every community toward the six national education goals adopted by the President and the Governors in 1990. Both the NES and AMERICA 2000 have better assisted every child in America to be able to obtain a quality education.

Over the years OCR has played a major role in desegregating southern and border state school districts, in ensuring that limited-English proficient students' needs were met, in making athletic opportunities available to female students, and in guaranteeing a free and appropriate education to students with disabilities to name a few. Yet, as we applaud this progress, we are cautioned about the challenges that remain.

We would do well to heed the words of French writer Rene Dubos, "Human diversity makes tolerance more than a virtue; it makes it a requirement for survival." With some estimating that by the year 2010, 85 percent of the new entrants into the American workplace will be women and minorities, we would do well to expand opportunities to our nation's colleges and universities in ways consistent with our notion of individual liberty. We would do well to continue expanding the horizon of classroom curricula. Without question, the contributions and experiences of women and minorities are valuable elements of the American experience that demand discussion and celebration. We would do well to explore new strategies - peer mediation, conflict resolution and legally sufficient sanctions - to address incidents of harassment on our campuses.

Finally, funding directly affects OCR's ability to conduct an aggressive, comprehensive civil rights compliance program. I urge the Congress to support OCR in its efforts to enforce the civil rights laws fully and effectively. The stakes are as high as ever.

Respectfully submitted,



Michael L. Williams
Assistant Secretary
for Civil Rights

CHAPTER I - ORGANIZATIONAL OVERVIEW

A. ENFORCEMENT PARAMETERS

Statutory Responsibilities

The Office for Civil Rights (OCR) in the U.S. Department of Education (ED) is a law enforcement agency. Its primary responsibility is to ensure that recipients of Federal financial assistance do not discriminate against students, faculty, or other individuals on the basis of race, color, national origin, sex, handicap, or age.

OCR is responsible for enforcing the following Federal civil rights laws:

OCR enforces laws prohibiting discrimination on the basis of race, color, national origin, sex, handicap or age.

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin, 42 U.S.C. §2000d et seq. (implementing regulation at 34 C.F.R. Parts 100 and 101);
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in educational programs, 20 U.S.C. §1681 et seq. (implementing regulation at 34 C.F.R. Part 106);
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of physical and mental handicap, 29 U.S.C. §794 (implementing regulation at 34 C.F.R. Part 104); and
- The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age, 42 U.S.C. §6101 et seq.

Under these four statutes, OCR has jurisdiction over programs and activities that receive Federal financial assistance. For educational institutions, the Civil Rights Restoration Act of 1987 defines jurisdiction over programs and activities as authority over all the operations of a recipient. OCR also has received delegations of civil rights enforcement authority from 19 other Executive Branch departments and agencies.

The civil rights laws enforced by OCR extend to a wide range of recipients of Federal funds. Recipients covered by the civil rights laws enforced by OCR include all state education and rehabilitation agencies and their subrecipients, as well as the education and rehabilitation agencies of the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States. These recipients also include nearly every school district and postsecondary institution; thousands of proprietary schools, libraries, museums, and correctional facilities; and other institutions that receive Federal financial assistance from ED.

Federal Civil Rights Relationships

In carrying out its civil rights enforcement responsibilities, OCR works with other Federal agencies, including the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), and the Federal Mediation and Conciliation Service (FMCS).

OCR works with the Department of Justice, the Equal Employment Opportunity Commission, and the Federal Mediation and Conciliation Service in carrying out the civil rights laws.

Under Executive Order 12250, DOJ is responsible for coordinating Federal Government agencies' enforcement of Title VI, Title IX, Section 504, and other Federal laws that prohibit discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs and activities receiving Federal financial assistance. Primary enforcement responsibility remains with the individual agencies, while leadership and coordination responsibility, in areas other than employment, is vested in DOJ. Coordination responsibility for the Age Discrimination Act is vested in the Department of Health and Human Services.

EEOC has primary coordinating authority under Executive Order 12067 for complaints of employment discrimination. OCR generally refers to EEOC those Title VI and Title IX complaints that allege discrimination solely in employment and that are not systemic or class-based in nature. Section 504 employment complaints, as well as systemic and class-based employment complaints under Title VI and Title IX, are generally retained for processing by OCR.

EEOC also has jurisdiction in employment cases alleging age discrimination. When complaints of discrimination in employment on the basis of age are filed with OCR, they are transferred to EEOC for investigation and resolution because OCR has no jurisdiction over these cases under the Age Discrimination Act.

OCR shares the responsibility with FMCS for processing age discrimination complaints that do not involve employment. OCR screens complaints alleging age discrimination to determine whether it has jurisdiction. If jurisdiction is established, the complaint is forwarded to FMCS for voluntary resolution. If FMCS is unsuccessful, or if either party does not agree to mediation by FMCS, OCR investigates the complaint in the same manner as complaints alleging other types of discrimination.

OCR works with ED's Office of Special Education and Rehabilitative Services to coordinate the enforcement of certain provisions of the Individuals with Disabilities Education Act with Section 504. OCR also works with ED's Office of Elementary and Secondary Education to implement the civil rights provisions of Title III of the Elementary and Secondary Education Act of 1965, as amended, i.e., the Magnet Schools Assistance Program.

B. ORGANIZATION

Structure

The Assistant Secretary for Civil Rights is responsible for the agency's overall operations and serves as principal advisor to the Secretary of Education on civil rights issues. OCR has ten regional offices, listed in Appendix A, that are responsible for a range of civil rights compliance responsibilities, including complaint investigations, compliance reviews, monitoring of corrective action plans, and technical assistance. Headquarters components provide legal, policy, operational, and management support services to the regions. During FY 1991, OCR developed plans for reorganizing its headquarters office, which will be discussed in more detail later in this chapter in the section on Management Initiatives.

Staffing

OCR's staff ceiling for FY 1991 was 820 full-time equivalent (FTE) positions (made up of full-time permanent and other-than-full-time-permanent staff). Twenty-four percent of the staff was located in headquarters, and 76 percent was divided among the ten regional offices.

Budget

OCR had a total funding level of $48,404,371 for FY 1991. The following table provides budget and staffing information on OCR for the past five fiscal years.

OCR's budget was $48,404,371, with a staff ceiling of 820 employees.

BUDGET AND STAFFING INFORMATION

FY	Budget Estimate to Congress	Appropriation	Appropriation After Sequester/ Supplemental	Congressional Budget FTE Level
1987	38,185,000	43,000,000	43,000,000	840
1988	42,676,000	40,530,000	40,530,000	820
1989	41,341,000	40,845,000	41,635,000	820
1990	45,178,000	45,178,000	44,572,000	820
1991	49,900,000	48,405,000	48,404,371	820

C. COMPLIANCE PROGRAM

OCR carries out its civil rights enforcement responsibilities through a variety of compliance mechanisms that are designed to ensure equal opportunity in our nation's schools, colleges and universities.

Most of OCR's staff resources are devoted to resolving discrimination complaints.

OCR's principal activity is the resolution of complaints of discrimination. The vast majority of OCR's staff resources in FY 1991 -- 87 percent -- were devoted to such activities as processing, mediating, and investigating complaints. OCR also conducts compliance reviews, monitors corrective action plans, provides technical assistance, and carries out other activities to ensure that recipients of Federal financial assistance meet their civil rights compliance responsibilities.

Since passage of the Civil Rights Restoration Act of 1987 (CRRA), which expanded OCR's jurisdiction under the laws that we enforce, OCR has had a dramatic increase in complaint receipts. Under the CRRA, each of the statutes OCR enforces is now applicable to all the operations of a school system, college, university, or other educational entity, so long as any part of the recipient's operations receives Federal funds from ED.

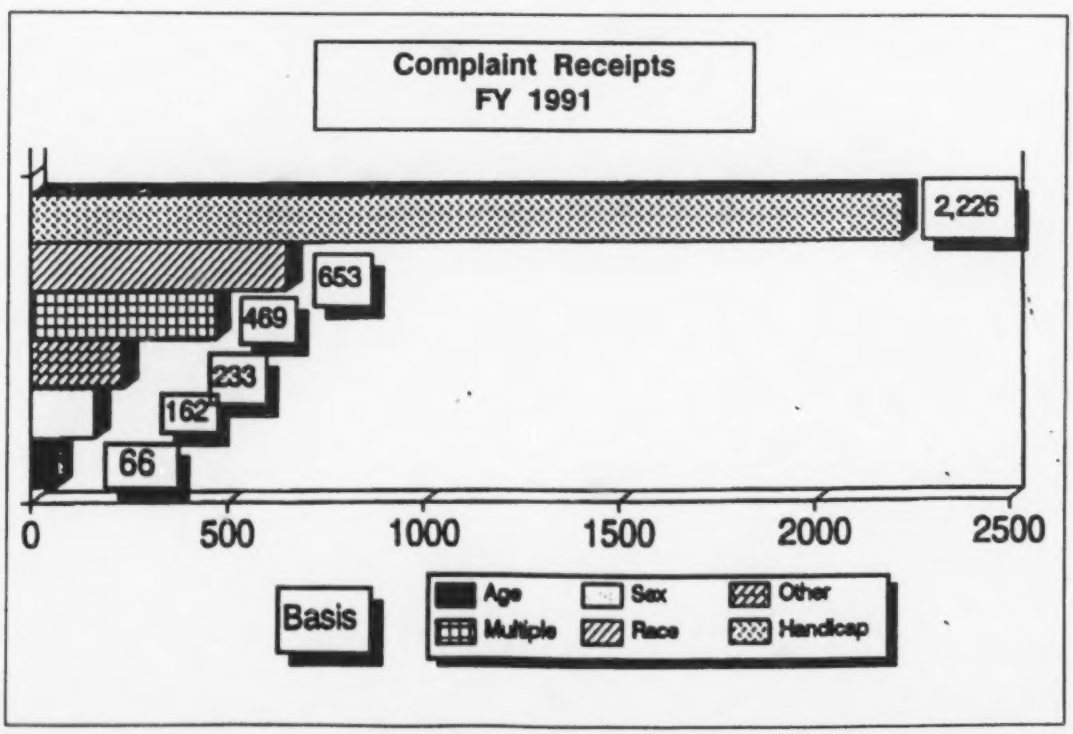
The number of complaints filed each year with OCR has nearly doubled since enactment of the CRRA. Many of these complaints are more complex and require more labor-intensive investigations than those received in previous years.

Complaint Investigations

The number of complaints filed with OCR has risen dramatically in the past few years.

OCR received 3,809 complaints during FY 1991, which exceeded any previous level in the agency's history. This represented a 13 percent increase over the number of complaints OCR received in FY 1990 and a 93 percent increase over the number received in FY 1987, the last full year before passage of the CRRA.

Approximately 64 percent of the complaints received in FY 1991 were filed against elementary and secondary education institutions, 26 percent were filed against postsecondary education institutions, and 10 percent were filed against vocational rehabilitation and other types of institutions. Seventy-nine percent of the complaints received in FY 1991 alleged discrimination in the delivery of services, while most of the remainder alleged discrimination in employment. As in previous years, nearly two-thirds of all complaints alleged discrimination on the basis of handicap. The chart below shows the number of complaints filed with OCR in FY 1991 by bases.



Early Complaint Resolution facilitates voluntary resolution of some complaints.

To expedite the voluntary resolution of some complaints, OCR offers a mediation process known as Early Complaint Resolution (ECR). In this context, OCR provides an opportunity for complainants and recipients to come together before the start of an investigation to resolve issues that have been raised. Successful ECR eliminates the need for an OCR investigation, freeing staff resources for other compliance activities. ECR is not offered in cases where an issue would affect more individuals than the complainant or where the issues are complex. In FY 1991, OCR offered ECR in 469 complaints, which represents 12 percent of the total complaint receipts. ECR was accepted in 280 complaints and successful in 192.

If OCR does not offer ECR in a complaint, or if ECR is refused by the complainant or by the recipient, OCR conducts a full investigation of the allegations. The investigation of a complaint involves such fact-finding activities as developing an investigative plan, collecting and reviewing pertinent documents, analyzing statistical information, and interviewing appropriate parties. This information is used to prepare an investigative report, which includes recommendations about the issuance of a Letter of Findings (LOF), as well as recommendations for corrective action, if warranted.

OCR attempts to obtain an appropriate corrective action agreement from the recipient before a violation LOF is issued. In those few cases where voluntary compliance cannot be achieved, a violation LOF is issued. Even after the issuance of a violation LOF, OCR continues efforts to obtain voluntary compliance before initiating enforcement action.

OCR also reviews requests for reconsideration of OCR's compliance determinations from complainants who disagree with one or more of OCR's findings. In considering these requests, OCR applies a standard of review based on the Administrative Procedures Act's standards of judicial review for administrative actions [5 U.S.C. 706 (2)(A)].

A complaint may be administratively closed for such reasons as lack of OCR jurisdiction; the complainant could not be located or refused to cooperate; or the case issues were investigated and closed by another agency (for example, EEOC). A substantive closure occurs when OCR investigates and issues a LOF on the allegations of discrimination or when a case is successfully mediated or otherwise closed with benefit to the complainant. This includes cases resolved through ECR.

During FY 1991, OCR closed 3,494 complaints, some of which had been filed in previous years. Forty-five percent, or 1,556, were administrative closures, of which 620 were closed because OCR determined that it had no jurisdiction over the recipient or the issues contained in the complaint. Although complaints that were closed administratively did not require full investigation, considerable staff resources were required to gather the facts necessary to close the complaints. Of the 1,938 substantive complaint closures in FY 1991, OCR secured corrective action in 1,124, or 58 percent. OCR found no violation of the civil rights laws in the remaining 814 cases.

Under our internal case processing time frames, OCR attempts to investigate and resolve complaints within 225 days after a complaint is received. In FY 1991, this was accomplished in more than 90 percent of the cases processed.

Compliance Reviews

OCR also initiates compliance reviews, most of which focus on the high priority civil rights issues identified in OCR's National Enforcement Strategy.

OCR also conducts compliance reviews of programs or activities receiving Federal financial assistance from ED to determine whether recipients are complying with the civil rights laws that OCR enforces. Compliance reviews differ from complaint investigations in that they are initiated by OCR, usually cover broader issues, and affect significantly larger numbers of individuals. Review sites are selected based on various sources of information that indicate potential compliance problems, including survey data and information provided by complainants, interest groups, the media, and the general public. OCR uses the same fact-finding, compliance determination, and negotiating procedures and standards for compliance reviews as are used for complaint investigations.

Most of OCR's FY 1991 compliance reviews focused on the high priority civil rights issues identified in the National Enforcement Strategy (NES). These issues, and the compliance reviews that were conducted on them in FY 1991, are discussed in Chapter II.

OCR conducts as many compliance reviews each year as resources permit. However, the number of compliance reviews that OCR is able to conduct is directly related to its complaint receipts and the workload engendered through complaint-related activities. Thus, because OCR's complaint workload has nearly doubled in the past four years, the number of compliance reviews conducted by OCR in FY 1991 is lower than the number of reviews conducted a few years ago.

Nevertheless, in FY 1991, OCR initiated 41 compliance reviews, which is a 28 percent increase over the number initiated in FY 1990. Approximately three-quarters of these reviews involved elementary and secondary schools. Given the focus on NES issues, the types of reviews started in FY 1991 differed dramatically from previous years, when one-third to one-half of the reviews covered issues of discrimination on the basis of handicap. In FY 1991, 85 percent of OCR's compliance reviews focused on race, national origin, or sex discrimination issues. OCR closed 22 compliance reviews in FY 1991, some of which had been started in previous years.

Monitoring

Institutions found in violation of the civil rights laws must submit corrective action plans.

OCR closes many of its complaints and compliance reviews where civil rights violations have been identified on the basis of a written commitment by the recipient institution to complete remedial action. Recipients whose cases are closed based on remedial action plans are required to submit progress reports to verify that the agreed-upon actions have been taken. OCR's substantive reviews of such reports are referred to as "desk audits." Besides desk audits, regional offices are expected to conduct on-site monitoring whenever it is needed to ensure that recipients have complied with their plan commitments.

Monitoring corrective action plans is an essential part of OCR's compliance process.

Consistent with OCR's NES, the monitoring of corrective action plans is a mandatory activity for all OCR regional offices and has the same priority as complaint investigations. During FY 1991, monitoring of corrective action plans was made equal in weight to complaint processing in the OCR Regional Directors' annual performance agreements. Furthermore, OCR's Quality Review Program, in which senior managers visit each of the regional offices to evaluate the quality of case processing activity (discussed in further detail in the Management Initiatives section below), focused particular attention on the regions' monitoring activity to ensure careful and thorough follow-through on corrective action plan commitments.

During FY 1991, OCR conducted 1,313 desk audits of corrective action plan progress reports; 17 on-site monitoring reviews were necessary to verify institutions' compliance with their agreements.

Other Compliance Activities

OCR also monitors the implementation of higher education desegregation plans in states that had previously operated racially

dual systems of higher education. OCR's continuing involvement in this area ensures that commitments contained in the plans are being met. During FY 1991, OCR monitored higher education desegregation activities in seven states, as described below.

OCR monitors states' higher education desegregation plans.

- **Florida** has completed all of its desegregation plan requirements with the exception of two construction projects at one traditionally black institution. In January 1990, OCR sent a letter to Florida confirming the end of May 1992 as the completion date for the two remaining construction projects. Florida advised OCR that it would complete these projects as scheduled.

- **Delaware** was notified in October 1989 that, based on an assurance that it would complete restoration of one historically significant building at its traditionally black institution, the State is in compliance with Title VI. Delaware advised OCR that it has completed restoration of this building.

- The **Kentucky** desegregation plan expired in 1987. In December 1988, OCR issued a proposed factual report for public comment and requested that the State provide updated information. OCR obtained supplementary information from Kentucky in 1990 and 1991, which OCR was analyzing at the end of the fiscal year.

- **Texas'** desegregation plan expired in 1988. In June 1991, OCR issued a proposed factual report for public comment. After analyzing the public's comments, OCR requested that Texas provide updated and additional information. At the close of FY 1991, OCR was analyzing the additional information provided by the State.

- The **Pennsylvania** desegregation plan also expired in 1988. During FY 1991, OCR headquarters staff prepared a draft factual report, which is under review.

- **Maryland's** plan expired in June 1990. OCR's Philadelphia regional office conducted on-site reviews of all institutions covered by the plan, and OCR headquarters staff is reviewing the region's on-site monitoring reports. A draft factual report is expected from the region in FY 1992.

- Regarding the **Virginia** desegregation plan, OCR conducted a follow-up on-site visit to Virginia State University in November 1989. On the basis of the information obtained during the on-site and additional documentation submitted by the Commonwealth,

OCR notified the Governor in April 1990 that further activities must be completed to enhance the two traditionally black institutions in Virginia. OCR requested that Virginia submit status reports in January 1991 and June 1991 describing the measures that would be taken to complete its obligations under the plan. Both of these reports were eventually submitted and are being reviewed by OCR.

OCR reviews applications for Magnet Schools Assistance Program funds.

OCR also reviews the desegregation components of grant applications submitted under the Magnet Schools Assistance Program (MSAP) and makes recommendations to the Office of Elementary and Secondary Education on whether applicant school districts are eligible to compete for MSAP funds. MSAP provides grants to assist eligible school districts in eliminating, reducing, or preventing minority group isolation in elementary and secondary schools and to provide for courses of instruction within magnet schools that will substantially strengthen academic knowledge and vocational skills of students attending such schools. OCR determines whether school districts have complied with the civil rights statutes and thus are eligible to compete for MSAP funds. OCR also reviews the school districts' desegregation plans to determine if they meet MSAP eligibility requirements and whether the applicants are likely to meet their civil rights assurances.

During FY 1991, OCR reviewed applications from 131 recipient school districts. OCR recommended against eligibility for 8 school districts and found 22 districts partially eligible. The other 101 school districts were found fully eligible to compete for MSAP funds.

Under the 1979 "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs," 34 C.F.R. Part 100, Appendix B ("Guidelines"), all states operating or administering vocational education programs are required to develop Methods of Administration (MOA) plans describing how they will monitor their own programs and those of their subrecipients to ensure that these programs comply with Federal civil rights laws and regulations enforced by OCR. OCR is responsible for ensuring that each state is meeting its MOA commitments.

OCR also monitors state vocational education programs.

During FY 1991, OCR evaluated 64 state Vocational Education MOA programs for compliance with the 1979 Guidelines. (There are more than 50 state agencies reporting because some states have divided responsibilities between two agencies. In addition, reports

are submitted by the District of Columbia, Puerto Rico, and the Virgin Islands.) OCR found that 58 state programs were substantially complying with their MOA commitments. The remaining six state programs had major deficiencies in their MOAs and were advised of the corrective actions necessary to resolve identified deficiencies and the actions OCR intends to take to ensure that recipients comply with their MOA responsibilities. Five states submitted corrective action plans, and OCR conducted a compliance review of one state program. Throughout the year, OCR provided technical assistance to states to help them fulfill their MOA compliance responsibilities.

Administrative Enforcement

OCR brings enforcement action against recipients that refuse to correct civil rights violations.

If OCR determines through a complaint investigation or a compliance review that a recipient has failed to comply with the civil rights statutes, OCR is required to seek voluntary compliance. When efforts to achieve voluntary compliance are unsuccessful, OCR is authorized to institute administrative enforcement proceedings before an administrative law judge (ALJ) or refer the case to DOJ for the initiation of court action.

The primary enforcement mechanism has been the administrative enforcement proceeding leading to fund termination. In the vast majority of cases, recipients voluntarily take steps to comply with the law before a final order of termination is issued.

Of the 11 cases in administrative litigation during FY 1991, OCR negotiated acceptable resolutions in four. Of particular note is OCR's agreement with the DeKalb County School District, Georgia, which had denied OCR access to information necessary to investigate complaints involving Section 504. In 1990, an ALJ ruled that DeKalb had violated Section 504 by denying OCR access, and termination of funds to the district became effective on September 14, 1990. After several adverse judicial decisions and months of negotiations, the district agreed to allow OCR access to information necessary to investigate the pending complaints and to cooperate in future investigations of complaints received by OCR. On the basis of this agreement, DeKalb's eligibility to receive Federal financial assistance from ED was restored on April 17, 1991.

During FY 1991, OCR also obtained favorable settlements in administrative enforcement proceedings against the River Rouge School District, Michigan; Rhea County School District, Tennessee; and Maywood School District, Illinois. In a case involving the

Capistrano Unified School District and the California State Department of Education, an ALJ found that Capistrano had violated Title IX by retaliating against a teacher who had filed a sex discrimination complaint against the district. The district appealed the ALJ's decision to ED's Civil Rights Reviewing Authority, which was considering the case at the end of FY 1991.

Six cases remained on OCR's administrative litigation docket at the end of FY 1991. Of these cases, two are on appeal to the Civil Rights Reviewing Authority, and four are at the trial level before ALJs. OCR did not refer any enforcement cases to DOJ in FY 1991.

Technical Assistance

Although technical assistance is often provided during complaint investigations and compliance reviews, OCR also conducts a broad program of proactive technical assistance outreach that complements our enforcement activities by facilitating voluntary compliance with the civil rights laws. The focus of our technical assistance efforts is to prevent violations of the civil rights laws by informing recipients of their civil rights compliance responsibilities and to advise the public of their rights. Technical assistance is provided through such activities as on-site consultations, conference participation, training, workshops, and meetings, as well as written and telephone consultations.

OCR emphasizes high impact technical assistance outreach activities to inform recipients of their compliance responsibilities and to advise the public of their rights.

As with compliance reviews, our ability to deliver technical assistance is directly related to the resources we expend on complaint-related activities. Because OCR's complaint workload has nearly doubled in the past four years, the quantity of our technical assistance activities has decreased. However, nearly 60 percent of the technical assistance OCR delivered in FY 1991 addressed high-impact National Enforcement Strategy issues involving substantive discussions of OCR's policies and regulatory provisions. More than one-third of these deliveries involved multiple NES issues. Examples of these activities are provided in the discussion of NES issues in Chapter II.

OCR staff also responds to issue-specific requests for assistance from ED recipients and beneficiaries. As in past years, the majority of technical assistance requests received by OCR in FY 1991 was related to Section 504 concerns.

OCR received 1,670 technical assistance requests in FY 1991, initiated 232 outreach efforts, and conducted 2,048 technical

assistance deliveries. Representatives from approximately 5,820 groups (such as state and local education agencies, post-secondary education institutions, and beneficiary organizations) and approximately 2,230 individuals participated in the technical assistance activities that OCR conducted in FY 1991.

As part of its ongoing technical assistance program, OCR develops and disseminates publications addressing specific civil rights issues. Due to budgetary constraints in recent years, OCR's stock of publications had become seriously depleted. However, in FY 1991, OCR ordered over half a million copies of new and existing publications to support and enhance its technical assistance efforts. In response to requests from interested individuals and groups, OCR disseminated approximately 103,000 publications from its newly replenished inventory. Appendix B lists all OCR publications currently available for dissemination.

To ensure the broadest possible dissemination of OCR policy documents, in FY 1991, we also established toll-free Policy Information Lines that the public may call to request a copy of any OCR policy document. The telephone numbers are 1-800-358-8247 and (TTD) 1-800-421-3481.

D. MANAGEMENT INITIATIVES

In addition to establishing the National Enforcement Strategy to focus our compliance and enforcement efforts, OCR implemented a number of significant management initiatives in FY 1991, discussed below, that were intended to support and enhance our NES-related activities.

Quality Review Program

A team of senior OCR managers conducts Quality Reviews of regional case processing activities.

Ensuring that OCR conducts high quality investigations is an integral part of the NES. The Assistant Secretary instituted a revised Quality Review Program in FY 1990 that provides for regional File Integrity Reviews and on-site visits by a Quality Review Team to five regional offices each year. The Quality Review Team is led by senior OCR regional and headquarters managers who have in-depth knowledge of civil rights laws, regulations, policies, and investigative procedures.

The Review Team focused on several high priority areas in its five OCR regional office visits in FY 1991. These included the quality

and legal sufficiency of remedies contained in corrective action plans; monitoring of corrective action plans; case processing efficiency; case processing time frames; and overall quality of case processing. The Review Team will also look at these issues in their reviews of the remaining five regions in FY 1992, after which it will prepare final reports for each region and submit overall findings and recommendations to the Assistant Secretary.

Training

OCR's training program had been virtually eliminated in recent years because of the substantial increase in our complaint workload and the attendant drain on resources. However, the National Enforcement Strategy implemented by OCR in FY 1991 makes staff training an integral part of OCR's efforts to carry out a comprehensive and well-coordinated civil rights enforcement program.

In January 1991, a week of intensive training on the FY 1991 NES high priority issues was provided to OCR senior regional managers and attorneys. During this workshop, staff had the opportunity to discuss and become familiar with draft and final policy documents, investigative techniques, and data analysis for these issues. Attendees trained their colleagues on the information discussed in the workshop when they returned to their respective regional offices.

OCR also conducted basic investigation training for new investigators during FY 1991 and arranged specific training programs for staff in two of the regions visited by the Quality Review Team to address issues identified during those reviews. In addition, OCR regional offices conducted a number of their own training sessions and workshops on various civil rights issues.

During FY 1991, OCR devoted substantially increased funds to training purchased from outside vendors. In FY 1990, OCR was able to spend only $1,235 on training in addition to that provided in-house or by ED's Horace Mann Learning Center (HMLC). By way of comparison, in FY 1991 OCR spent a total of $110,600 in addition to that provided in-house or by HMLC, including mandatory supervisory training for new supervisors and managers, skills enhancement for professional and clerical staff, and a variety of technical and administrative training.

Increased Resources in the Regions

One of OCR's primary goals in FY 1991 was to make additional staff resources available to the regional offices. We made substantial progress in meeting this goal by using headquarters staff more efficiently. OCR started FY 1991 with 617 staff in the regional offices; at the end of the fiscal year, the regions had a total staff of 676, an overall gain of 9.5 percent. Staff ceilings in regions with the greatest workloads were raised, in some cases substantially, and OCR took a number of steps to reduce the time it takes to hire new staff.

Transfer of Responsibilities for States Among Regions

OCR tries to balance the complaint workload among the regional offices.

In recent years, OCR's complaint receipts have risen significantly in some regions but not in others, resulting in an inequitable distribution of the complaint workload among regions. To better balance the workload, OCR transferred responsibility for handling certain states from regions with comparatively higher complaint receipts to regions with fewer complaint receipts. Appendix A lists all ten OCR regional offices and the states for which they are now responsible.

Reorganization of OCR Headquarters

OCR headquarters had been operating within an organizational structure that, except for a few modifications over the years, was designed in 1983. It became apparent that insufficient resources were being devoted to the performance of critical legal, policy, and enforcement activities. Given the significant and unabated increase in complaint receipts, OCR needed to find ways to relieve the workload burden on the regions.

To address these problems, in FY 1991 OCR developed a revised headquarters structure that provides for more effective staff utilization, reduces some workload burdens on the regions, and eliminates areas of duplication and overlap. By refocusing technical expertise along functional lines, such as moving the training function into the policy development area, OCR expects the restructured headquarters organization to enhance performance, productivity, and coordination, as well as responsiveness to regional needs.

Enhanced Technology

Budget constraints in recent years made it difficult for OCR to obtain sufficient computers for staff to process efficiently the enormous amount of necessary data and paperwork involved in complaint investigations, compliance reviews, and other compliance activities. OCR's work is extremely labor-intensive, and most staff members spend a high percentage of their time working on compliance and enforcement-related documents.

At the beginning of FY 1991, as for the past several years, many regions were still using outmoded word processors that were slow, cumbersome, and often in need of repair. In FY 1991, OCR spent over $900,000 to acquire more than 230 computers and a large number of laser printers. By bringing OCR to almost a two-to-one ratio of staff to personal computers, we significantly enhanced our ability to handle efficiently our continually increasing workload.

CHAPTER II - NATIONAL ENFORCEMENT STRATEGY: FY 1991 PRIORITY ISSUES

During the past four years, OCR's complaint receipts have nearly doubled. Nearly two-thirds of these complaints alleged discrimination on the basis of handicap, and many of these involved a single complainant and narrow issues.

It became increasingly clear that, in addition to meeting its complaint processing responsibilities, OCR needed to focus on important issues that may not arise through complaints and to initiate investigations of broader impact than are found in most complaint allegations. To become a more effective and visible agency, OCR needed to establish clear priorities, develop and disseminate policy on critical and newly emerging civil rights issues, and strengthen its compliance, enforcement, and technical assistance activities.

OCR's National Enforcement Strategy focuses on specific high priority civil rights issues.

Therefore, on December 11, 1990, the Assistant Secretary for Civil Rights issued a National Enforcement Strategy, covering Fiscal Years 1991 and 1992, that describes OCR's goals for an enforcement program that supplements and complements our complaint investigation program. Key aspects of the NES are:

- integrating OCR's policy development, staff training, compliance review, and technical assistance functions into a comprehensive and well-coordinated program for addressing specific high priority civil rights issues;
- making the monitoring of corrective action plans mandatory and a particular focus of OCR's Quality Review Program; and
- restructuring OCR to accomplish more effectively its mission.

The NES sets forth specific high priority issues to receive special emphasis during FY 1991 and FY 1992. OCR selected these issues based on experience and knowledge of recurring compliance problems and because of their potential for broad impact on large numbers of students. Emphasizing these issues, most of which involve discrimination on the basis of race or sex, also brings a better balance to OCR's overall compliance programs. In this chapter, we will discuss OCR's policy development, compliance review, and technical assistance outreach activities regarding each of the FY 1991 high priority civil rights issues.

Equal Educational Opportunities for National Origin Minority and Native American Students Who Are Limited-English Proficient

Some national origin minority and Native American students who are limited-English proficient (LEP) do not speak, read, write or understand English well enough to benefit from a regular course of instruction. Title VI requires school districts to provide special language assistance services to address the English language deficiencies of these students so that they may have the same education opportunity as non-LEP students. On September 27, 1991, OCR issued a policy update on the application of Title VI to the provision of services for LEP students for use by the OCR regional offices in conducting investigations on this issue.

School districts must meet the needs of limited-English proficient (LEP) students.

OCR initiated compliance reviews of 12 school districts in FY 1991 to ensure that they are providing special language services to meet the education needs of LEP students. This is the largest number of compliance reviews OCR has initiated on this issue in several years.

During FY 1991, OCR also continued to investigate complaints alleging discrimination against LEP students. For example, during its investigation of a complaint against the Hawaii Department of

Education (HDOE), OCR found that many LEP students were assigned to regular classes taught by teachers without minimum training requirements in English-as-a-Second-Language or bilingual teaching methodology that was set forth in the State's program. There was also a shortage of bilingual part-time teachers and aides who were available to work with LEP students in the classrooms. OCR also found that 371 LEP students had been reclassified and exited from special language assistance programs before they had met HDOE's own exit criteria.

In response to OCR's investigative findings, a school district developed a plan to ensure that LEP students receive special language assistance services.

In response to OCR's finding that these practices violated Title VI, the HDOE submitted a corrective action plan. HDOE agreed to develop a plan to remedy the shortage of instructional and support staff who provide services to LEP students. All LEP students will receive appropriate instructional support in core content areas, based on identified needs. Students exited from special language assistance programs will meet HDOE's exit criteria, and decisions regarding the reclassification and exiting of students from the special language assistance program will be documented.

During FY 1991, OCR worked on developing a technical assistance resource package and a pamphlet on providing services to LEP students. OCR also conducted a number of technical assistance outreach activities during FY 1991 on the issue of equal educational opportunities for LEP students. For example, OCR Region I participated in a region-wide conference entitled "Second Annual New England Hispanic Conference - Coming Together," cosponsored with DOJ's Community Relations Service and other Federal agencies. Representatives from state and local education agencies, state and local governments, postsecondary institutions, and beneficiary organizations from the New England states participated in the conference. The regional staff responded to a variety of concerns raised by the participants, including: inadequate materials and resources in bilingual education programs; lack of access to counseling services; and inadequate school notices to parents with limited English skills. OCR provided suggested strategies for addressing the participants' compliance concerns.

Ability Grouping That Results in Segregation on the Basis of Race and National Origin

Ability grouping is the practice of arranging groups of students within grade levels or classes according to their estimated capacity to learn or perform. During FY 1991, OCR developed a draft policy under Title VI on ability grouping practices that result in segregation

on the basis of race. We also initiated seven ability grouping compliance reviews. OCR headquarters is reviewing the investigative reports for each of these reviews to ensure consistency of approach by the regional offices and to obtain additional information on issues surrounding the draft policy. Upon completion of our analysis of all seven reviews, OCR will confer with other Departmental components in developing a final policy statement.

During FY 1991, OCR continued to investigate complaints alleging that school districts were using discriminatory ability grouping practices. For example, OCR completed its investigation of a complaint alleging that the Flossmoor School District (Illinois) had an ability grouping system that discriminated against black students at a junior high school by disproportionately placing them in lower ability grouped levels and by generally failing to allow them admission to higher ability grouped levels designed for high school credit. Under the district's ability grouping practices, students were placed in groups for instruction in reading, English, mathematics, and science based on the Iowa Test of Basic Skills scores, teacher recommendations, and student academic profiles.

A school district discriminated against black students in its ability grouping practices.

OCR determined that the district's ability grouping practices had a disproportionate effect on black students. OCR found that 21 out of 36 ability grouped courses were racially identifiable because they enrolled statistically significant disproportions of black or non-black students.

The district had not consistently applied its placement criteria, and this inconsistent application had led to significantly increased segregation. For example, OCR found that a much higher percentage of the non-black students as compared with the black students were in placements that did not conform to the objective criteria allegedly used by the district to validate its placement decisions. As a result, a number of non-black students were inappropriately placed in higher ability grouped courses. OCR also found no evidence that district staff were provided standards or training to verify that placements were appropriate.

OCR also determined that the district did not have a legitimate educational justification for its ability grouping practices. The goal of the district's ability grouping system was to place students at a level where they could be successful. OCR found that the district provided additional services to gifted students to assist them in reaching that goal. However, OCR found that students in the lower

levels generally did not receive modified curricula, specially trained staff, or other resources designed to foster significant gains in achievement. OCR also found that the district had not adopted measures reasonably calculated to monitor the achievement of its general goal. The junior high school tested its students on an annual basis, but there was no evidence that individual students' test results were analyzed from year to year to determine if significant educational gains from ability grouping had occurred. OCR found that minority students remained in the lower groups with no meaningful upward mobility.

OCR secured corrective action.

As a result of OCR's findings, Flossmoor immediately eliminated ability grouping of science courses for all grades and agreed that, effective the first semester of the 1992-1993 school year, it will implement a revised system for assigning students to English, reading, and mathematics courses on the basis of achievement or ability. The district's revised system will include clearly stated educational goals with measures reasonably designed to meet the goals, and the district will provide clear guidance to staff regarding the application of placement criteria.

During FY 1991, OCR developed a draft technical assistance resource package on ability grouping. OCR also conducted technical assistance outreach on this issue. For example, OCR Region V participated in a conference on ability grouping attended by representatives of the Illinois State Board of Education and 13 school districts from the Chicago metropolitan area. The school districts invited to the conference were among those with the highest increase in minority student enrollment during the past five to ten years. Regional staff discussed OCR's draft ability grouping policy and information on academic research on the issue, as well as responded to specific questions from the audience.

Racial Harassment in Educational Institutions

Racial harassment in our nation's educational institutions diminishes the quality of education for all students. During FY 1991, OCR drafted a policy guidance document on the issue of racial harassment, which is currently undergoing internal review.

OCR initiated one racial harassment compliance review during FY 1991, as well as completed a number of complaint investigations on the issue. For example, OCR investigated a complaint alleging that the Delaware City School District (Ohio) racially harassed black

students or condoned racial harassment of black students by white students.

During the 1988-1989, 1989-1990, and 1990-1991 school years, black students at a district high school were repeatedly subjected to offensive racial slurs by white students. In some instances, the use of racial slurs by white students led to fights between white and black students. During several meetings of the district's Board of Education in the spring of 1990, black students and parents expressed concern about several incidents involving racial slurs. Black students also alleged that one administrator actively discouraged interracial dating by calling the parents of white female students and informing the parents that their daughters were dating black male students. The district did not take action to investigate these allegations.

A school district contributed to a racially hostile environment for black students.

OCR found that the district had not taken any steps publicly to notify parents and students it would not condone racial harassment. In addition, OCR determined that the district's failure to investigate the allegations that an administrator had called parents of white female students to report or oppose interracial dating also contributed to a climate of racial intolerance. Accordingly, OCR concluded that, through its actions and omissions, the district fostered a racially hostile environment for black students and subjected them to different treatment on the basis of race.

In a corrective action plan obtained by OCR, the district developed a comprehensive program for addressing race relations.

Following discussions with OCR, the district agreed to take corrective action. The district agreed to develop and disseminate a policy statement on racial harassment that establishes sanctions for harassers and a grievance procedure. The district also agreed to include a component addressing race relations in its annual high school freshman orientation program. During the fall of 1991, this component was presented to all students attending high school in the district. In addition, the district agreed to conduct in- service training to notify staff at the high school of the district's policy prohibiting racial harassment and the steps to be taken by staff members who witness or learn about incidents of racial harassment.

During FY 1991, OCR drafted a technical assistance resource package on racial harassment for use by the regional offices, as well as a pamphlet on preventing racial incidents on college campuses. OCR also conducted technical assistance outreach on this issue. For example, OCR Region IV staff participated in a conference sponsored by the National Association for the Advancement of Colored People entitled "Stop the Madness: Ending Racism on

College Campuses," held at the University of South Carolina. Approximately 150 students and representatives from 27 colleges and universities nationwide attended the conference. The OCR panelist discussed Title VI and racial harassment, as well as various strategies colleges and universities are undertaking to manage and prevent racial incidents on campus.

Responsibilities of School Systems to Provide Equal Educational Opportunities to Pregnant Students

Title IX prohibits a school system from discriminating against any student on the basis of such student's pregnancy, childbirth or conditions associated with pregnancy. On October 15, 1990, OCR sent a letter to all the nation's Chief State School Officers explaining the requirements of Title IX with respect to pregnant students attending public schools.

OCR initiated compliance reviews of seven school districts in FY 1991 to determine whether they were providing equal educational opportunities to pregnant students. This was the first time in the agency's history that compliance reviews were conducted on this issue. Previously, OCR only responded to complaints that alleged discrimination based on pregnancy.

A school district discriminated against pregnant students in providing homebound services, medical leave and opportunity to participate in some classes.

One of the school districts selected for review was the Atlanta Public Schools (Georgia). OCR found that a number of Atlanta's policies and practices resulted in discrimination against pregnant students in violation of Title IX. For example, the district's policy on providing homebound services imposed a higher admission standard for pregnant students than for students with other types of medical conditions. Also, only pregnant students were required to submit a physician's statement to continue participation in the regular educational program, to complete missed work assignments, or to return to school after a leave of absence.

In addition, some of Atlanta's high schools discouraged or denied participation of pregnant students in dance, chorus, physical education and exercise classes. At one high school, pregnant students were not allowed to go to the restroom during class time. Atlanta also violated Title IX by failing to ensure that its alternative high schools, which are operated through a private nonprofit corporation, are in compliance with the law. One of these alternative schools did not accept pregnant students who were in the latter stages of pregnancy.

OCR secured a comprehensive corrective action plan.

In response to OCR's findings, Atlanta submitted a comprehensive corrective action plan to remedy all the violations of Title IX identified by OCR. This included eliminating the higher standard imposed on pregnant students for homebound services. Atlanta agreed that pregnant students will not be required to submit a physician's statement either to stay in school, have work assignments sent home, or return to school after childbirth, unless this is required of other students with temporary disabilities. Schools were to notify all students and staff that pregnant students cannot be discouraged or prevented from running for class office or participating in extracurricular activities. The alternative school was required to issue a notification clarifying that no student may be denied admission on the basis of pregnancy.

During FY 1991, OCR developed a model technical assistance presentation and resource package for use by the regional offices in conducting technical assistance outreach on teenage pregnancy and parenthood issues, as well as drafted a pamphlet on this issue that will be printed and disseminated to school districts and the public. OCR also conducted a number of related technical assistance outreach activities during FY 1991.

For example, OCR Region V participated in a workshop sponsored by the Illinois State Caucus on Teen Pregnancy. Specific topics addressed were the rights of pregnant students to: (1) stay in school and attend regular classes throughout the pregnancy; (2) participate in all school and extracurricular activities; (3) have excused absences for health problems related to pregnancy and/or delivery; (4) attend an alternative program or school, if one is available and if the student voluntarily makes this choice; (5) receive homebound instruction if they are unable to attend school for health problems related to pregnancy; and (6) return to school after childbirth.

Appropriate Identification for Special Education and Related Services for Certain Student Populations, e.g., Drug Exposed and Homeless Children with Handicaps

In response to OCR's concern about the widespread national problems involving children whose families are homeless and children who are born to mothers who are addicted to drugs, OCR sent a letter on October 15, 1990, to the Chief State School Officers reminding them of the Section 504 requirements concerning both of these groups, which may include children who are handicapped. The Section 504 regulation requires school districts to identify annually and locate every qualified handicapped person residing in their

School districts must identify and locate handicapped children who are homeless or drug exposed and must provide a free appropriate public education to qualified handicapped children.

jurisdiction who is not receiving a public education. School districts must also take steps on an annual basis to notify handicapped persons and their parents or guardians of the districts' duty under Section 504 to provide a free appropriate public education to each qualified handicapped person in their jurisdiction.

During FY 1991, OCR initiated its first compliance review on this issue. We also developed and disseminated to the regional offices a resource package and a model technical assistance presentation package on identification and location of homeless children with handicaps to assist the regions in providing outreach on this issue. A model technical assistance presentation package on identification and location of drug exposed children with handicaps also was developed and is undergoing internal Departmental review.

Various technical assistance outreach activities were initiated on this issue in FY 1991, including a workshop conducted by OCR Region II entitled "Education of Homeless Children and Youth - Section 504 Concerns" for administrators, teachers, and sign language interpreters in the Special Education Division of the New York Public School System. OCR's presentation focused on the requirements of Section 504 with respect to locating homeless children and youth with handicaps and ways to make these efforts more effective.

OCR Region V participated in three conferences entitled "Integrating the Student with Health Impairments into the Regular Classroom," sponsored by the Illinois Department of Public Health, that were attended by approximately 180 public health and school nurses. OCR discussed the problem of identifying handicapped children born to mothers who are addicted to drugs and/or whose families are homeless. Since public health and school nurses are likely to encounter these populations, OCR explained a school district's annual obligation to identify and locate every qualified handicapped person residing in its jurisdiction who is not receiving a public education. OCR stressed that a district's child- find procedures should be designed to include these populations.

Discrimination on the Basis of Sex in Athletic Programs

Under Title IX, school districts and colleges and universities that have athletics programs are required to provide equal athletic opportunity to male and female students. In determining whether an institution is providing equal athletic opportunity, OCR looks at various athletic program components, such as the accommodation of

athletic interests and abilities, provision of equipment and supplies, and coaching. OCR makes an overall assessment of an institution's compliance, rather than a sport-by-sport comparison, giving institutions the flexibility to emphasize different teams for men and women and permitting emphasis on certain benefits and services for certain teams.

OCR issued a Title IX Athletics Investigator's Manual in April 1990 and, during FY 1991, solicited comments on the Manual from OCR regional staff. Comments from the regional offices and from some outside groups were being analyzed with a view toward making appropriate revisions to the Manual. OCR initiated one interscholastic and six intercollegiate athletic compliance reviews in FY 1991, as well as investigated complaints on these issues.

OCR found that seven school districts were not equally effectively accommodating the athletic interests and abilities of male and female students.

For example, OCR received complaints that seven school districts in Massachusetts--Chicopee, Holyoke, Longmeadow, Ludlow, Northampton, Agawam, and Westfield--did not provide female students equal opportunity to participate in interscholastic athletics. OCR determined that none of the seven districts had equally effectively accommodated the interests and abilities of male and female students, as required by Title IX. Six districts did not have effective means for adequately assessing students' athletic interests and abilities. These districts used such methods to assess students'

interests and abilities as sign-up sheets, verbal announcements, outreach at orientation sessions for incoming freshman students, or athletic surveys that failed to address new sports or teams in which students may be interested. Although the Agawam school district had administered an adequate athletic interest survey to students, Agawam was not meeting the expressed interests and abilities of its female students. For example, the survey showed that female students had a great interest in several sports, including a ninth grade softball team, but the district did not respond by establishing any of these sports activities.

As a result of OCR's investigation, a variety of new teams and levels of competition are now being offered to female students.

In response to OCR's findings, the seven districts agreed to implement corrective action plans to provide equal athletic opportunity for female students. For example, the Agawam school district established female softball teams at the varsity, junior varsity, and freshman levels. The other six districts conducted an assessment of student interests to determine whether they are equally effectively accommodating the interests of female athletes. The assessments included existing sports and teams, as well as sports and teams not presently offered or available, and addressed participation at all levels, including freshman, junior varsity and varsity. After the assessments were reviewed, four districts took measures to ensure that they are meeting the expressed interests and abilities of female students, as required by Title IX. For example, Chicopee school district established female cross-country, basketball, soccer, and ski teams at the freshman level. OCR is monitoring the measures being taken by the other two districts to ensure that they are meeting the expressed interests and abilities of female students.

Athletic equipment and services for female students were inferior to those provided male students at a university.

OCR also investigated complaints alleging discrimination in athletics programs at colleges and universities. At Furman University (South Carolina), women comprised 26 percent of the athletes but received only 20 percent of the athletic scholarships. Unlike the men's teams, none of the women's teams had all the equipment necessary to practice and compete, and there were no equipment managers. Only one locker room, which was substandard, served the entire women's program. In contrast, the men's football, basketball, soccer, baseball, and track teams each had well- furnished locker rooms for their exclusive use. Women athletes were charged for using weight training equipment while men used the equipment at no charge. Several men's teams were provided with less crowded housing during road trips, received pre-game meals during road trips, and received higher per diem allowances than all women's teams. Women's teams were not

provided adequate dining services during school breaks and holidays.

The provision of publicity and support services was not equivalent for women, and Furman did not provide equivalent opportunities in recruitment of athletes. For example, men's programs accounted for 80 percent of recruitment expenditures compared with 20 percent of recruitment expenditures by women's programs. Courtesy cars for use in recruitment were provided only to the men's coaching staff, and most of the subsidized campus visits were provided to prospective male athletes.

OCR obtained a corrective action plan to improve athletic opportunities for women.

As a result of these findings, Furman is now providing scholarships to women in proportion to their participation in the intercollegiate athletics program. Also, the women's basketball and volleyball teams are now provided practice uniforms, student managers are assigned to maintain equipment and supplies, and a large women's locker room was constructed within the general locker room area. Beginning with the 1991-1992 school year, women athletes were allowed use of all weight training equipment without charge. The travel budget for women's sports was increased, resulting in similar housing and food services for women's teams on road trips. An assistant sports information director was hired to handle publicity for women's teams, and the budget for recruitment is now based on the representation of men and women in Furman's athletics program.

OCR also provided technical assistance on athletics issues during FY 1991. For example, OCR Region IV participated in the spring meeting of the Southern Athletic Conference and conducted an in-depth presentation on OCR's Title IX athletics policy and steps that may be taken to prevent Title IX violations. Region IV staff also met with a representative of a law firm that represents approximately 20 school districts in North Carolina. The attorney wanted to know which Title IX issues were recurring and how school districts could address them. OCR indicated that failure to accommodate effectively interests and abilities of female students was probably the most recurring compliance problem and provided information on the Title IX requirements and possible strategies for addressing this issue.

Discrimination on the Basis of Race in Postsecondary Admissions Programs and Provision of Financial Assistance

On March 20, 1991, the Secretary of Education announced a Departmental review of policies concerning student financial aid in which race, color, or national origin is a factor. As part of the

process, OCR solicited information and comments on this issue through a May 30, 1991, notice in the Federal Register.

The Department carefully considered the 200 comments received and, on December 10, 1991, published proposed policy guidance in the Federal Register. The proposed policy guidance contains a set of principles to assist colleges and universities in their efforts to increase participation of minority students in higher education, within the limitations imposed by Title VI.

More than 900 comments and pieces of correspondence on the proposed policy guidance were received, and the Department began the process of developing final policy guidance on race-exclusive financial aid. However, in response to a request from senior members of Congress, the Secretary announced, on June 10, 1992, that the Department would defer issuing final policy guidance until the General Accounting Office completes a study on this issue.

OCR also has been addressing the issue of possible discrimination against Asian American students in admission to postsecondary education programs. Title VI prohibits use of restrictions on admissions that are based on race, color, or national origin. At the beginning of FY 1991, OCR issued findings in two major compliance reviews regarding possible discrimination against Asian American students in college admissions, one involving the graduate program at the University of California at Los Angeles (UCLA) and one involving Harvard University. The findings in these reviews were discussed in some detail in OCR's FY 1990 Annual Report to Congress. During FY 1991, OCR continued work on a number of other cases involving allegations that admissions policies or practices limited the enrollment of Asian Americans.

OCR also provided technical assistance regarding the issue of discrimination on the basis of race in admissions programs during FY 1991. For example, in response to a request from a consortium of 14 liberal arts institutions, OCR Region V made a presentation to the participants in an urban studies seminar on Title VI requirements applicable to admissions. OCR's presentation focused on our findings in the UCLA and Harvard cases, the methodology used in these reviews, and the application of the methodology in the context of OCR's investigative findings in each review.

Attention Deficit Disorder

Attention Deficit Disorder (ADD) is a term used to describe chronic disorders (such as Attention Deficit Hyperactivity Disorder) identified by the following characteristics: inattention, distractibility, impulsivity, difficulty in delaying gratification, and overarousal (or hyperactivity). Some children with ADD may be handicapped within the meaning of Section 504 and entitled to receive special education or related services. In FY 1991, OCR joined with the Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education in issuing a memorandum to Chief State School Officers clarifying school districts' responsibility to provide a free appropriate public education to students with ADD.

OCR investigated a number of complaints involving students with ADD during FY 1991. For example, the mother of a student who was diagnosed with ADD filed a complaint against the Columbia County School District (Georgia) alleging that the district discriminated against her son by failing to properly evaluate and place him in an educational setting designed to meet his specific educational needs and by failing to provide him a free appropriate public education. The student demonstrated behavioral problems, an inability to complete work, inattentiveness, impulsivity, and hyperactivity. In response to these behaviors and after consultation with his parents, the student was provided services through intervention strategies in the regular education program.

A school district failed to provide a comprehensive evaluation of a student with Attention Deficit Disorder (ADD).

The student continued to demonstrate the same behaviors and, on his parents' request, was referred to the district for initial screening. The school reported that the results of the tests indicated an appropriate range of functioning in comparison to his intelligence. The tests given by the district, however, were intelligence and achievement tests and were not designed to identify or assess ADD.

OCR determined that the district's assessment of the student did not conform to the standards for a comprehensive evaluation specified in the Section 504 regulation, although documentation from teachers and the parents suggested that the student's difficulties were related to a possibly handicapping condition. OCR also found that the district categorically excluded students with ADD from participation in special education services and programs. On the basis of the facts of the case, OCR concluded that the district violated Section 504 because it failed to adequately evaluate the

As a result of OCR's investigation, the school district will adopt procedures to ensure the provision of a free appropriate public education to qualified handicapped children with ADD.

student and provide him, and other students with handicaps, a free appropriate public education.

To correct these violations, the district agreed to develop procedures to ensure that it provides a free appropriate public education to qualified handicapped children with ADD. In addition, the district agreed to further evaluate the complainant's child so that an appropriate individualized education plan could be developed and implemented.

During FY 1991, OCR developed and disseminated to the regional offices a technical assistance resource package and a model technical assistance presentation on ADD. OCR provided technical assistance on this issue in a variety of contexts. For example, OCR Region IV staff discussed school districts' obligations under Section 504 to evaluate children with ADD in a meeting with the Florida Department of Education (FDE), which requested assistance in response to an OCR investigative finding concerning a local school district. The FDE representatives who participated in the meeting indicated that they would recommend revising existing state policies and procedures to ensure that students with handicaps, including those suspected of having ADD, are properly identified and provided appropriate educational services and procedural safeguards. FDE staff also planned to develop and disseminate technical assistance materials and conduct in-service training on this issue for school districts throughout the State of Florida.

CHAPTER III - OTHER ELEMENTARY AND SECONDARY EDUCATION ISSUES

Almost all of the approximately 16,000 public school districts in the nation receive some form of Federal financial assistance and, therefore, are covered by the civil rights laws enforced by OCR. During FY 1991, 64 percent of OCR's complaint receipts and 76 percent of OCR's compliance review starts involved elementary and secondary schools. Many of the issues that OCR considered in these investigations concerned fundamental rights of access to equal educational opportunities. The denial of such opportunities to a child may bar any later possibility for that student to fully develop his or her talents. In effect, an artificial barrier may be raised early in a student's life, with a successive narrowing of educational choices and lowering of educational expectations and career aspirations.

The examples cited below are drawn from hundreds of cases investigated in FY 1991 in which OCR secured voluntary corrective action from recipients to resolve violations of the civil rights laws. As the examples indicate, OCR's compliance activities were directed at affording all students the opportunity to realize their educational potential from the moment they enter the public school system.

Transportation

Under Title VI, students, regardless of their race, color, or national origin, must receive equal opportunity to participate in transportation services. OCR investigated a complaint that the Roosevelt Independent School District (Texas) subjected black and Hispanic students to different treatment and segregation in the delivery of bus services based on their race and national origin.

A school bus driver attempted to segregate black and Hispanic students and made racially derogatory remarks.

OCR determined that a bus driver for the district made racially derogatory statements to black and Hispanic students. The driver also attempted to segregate students on the bus and referred black and Hispanic students for disciplinary actions, ignoring the same offenses when committed by white students. As a result of the district's own investigation of the allegations of discrimination, the bus driver received a written reprimand stating that a recurrence of these actions would result in job termination. The reprimand was placed in the bus driver's personnel file.

OCR obtained corrective action, which included race relations training for school district staff.

Following a discussion of OCR's findings, Roosevelt agreed to develop and implement a policy on race and national origin discrimination and disseminate procedures for resolving discrimination complaints involving students, employees, and visitors. The district also agreed to conduct in-service race relations workshops for its staff.

Free Appropriate Public Education

Under Section 504, a recipient that operates a public elementary or secondary education program must provide a free appropriate public education to each qualified handicapped person in its jurisdiction. An appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual needs of a handicapped person as adequately as the needs of nonhandicapped persons are met.

A complaint was filed against the Chicago Public School District #299 (Illinois) for failing to provide the requisite speech and language services to students identified as having speech and language handicaps. OCR determined that 981 students who were identified as having speech and language handicaps and who were in need of services attended schools that did not provide speech and language services. In 86 schools in the district, students in need of speech and language services did not have providers assigned to them.

Students with speech and language problems were not receiving appropriate services.

Private providers were contracted on an as-needed basis to conduct evaluations, but speech and language services were not provided. Also, although the district recognized that it lacked sufficient staff, it did not prioritize students' needs on an interim basis to ensure that students with severe speech and language problems were served before students with less serious needs. In addition, while all the schools in one subdistrict had speech and language providers assigned to them, one-third of the schools in the other two

subdistricts did not have speech and language providers for students who needed speech and language services.

The school district submitted a corrective action plan to ensure that students' speech and language needs are met.

As a result of OCR's findings, the district agreed to adopt procedures to fill the staff vacancies. The district agreed that, in the event of staff shortages, it would prioritize the needs of students so that students with the greatest needs would be served first. Whenever the individual education program (IEP) developed for a handicapped student cannot be implemented by the next school semester after the IEP is adopted, a written interim IEP is to be developed and implemented within a reasonable period of time. Also, the district agreed that students who do not receive services delineated in the IEP by the next school semester after the IEP is adopted will receive compensatory services.

Educational Setting

Section 504 requires that a handicapped student must be educated with nonhandicapped students to the maximum extent appropriate to the needs of the student who is handicapped. A student with handicaps may be removed from the regular educational setting only where the recipient can show that the needs of the student cannot be met satisfactorily with the use of supplementary aids and services.

A school district assigned handicapped students to isolated special education centers without determining whether their educational needs could be met in a less restrictive environment.

OCR investigated a complaint that the Allegheny Intermediate Unit (AIU) (Pennsylvania) discriminated against students classified as educable mentally retarded/socially emotionally disturbed (EMR/SED) by assigning them to isolated special education centers within the school system without determining whether their educational needs could be met in a less restrictive environment. OCR found that all the 124 students from 32 different school districts in Allegheny County classified as EMR/SED in the 1990-1991 school year attended one of seven isolated special education schools. Neither the AIU nor any of the districts offered programs for EMR/SED students in any other schools in the districts.

In a signed statement to OCR, the AIU acknowledged that it had failed to demonstrate, as required by the Section 504 regulation, that the appropriate educational needs of the students classified as EMR/SED could not be met with supplementary aids and services in the regular educational environment. The AIU also stated that it was

possible that some of the students could receive their educational programs in a less restrictive environment or participate in some activities with nonhandicapped students.

OCR secured corrective action.

As a result of OCR's investigation, the AIU agreed to correct these violations. The AIU agreed to eliminate the EMR/SED classification and to reevaluate students identified as EMR/SED. The AIU also agreed to establish a continuum of alternative placements to

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implement an appropriate education program for each student formerly classified as EMR/SED. The continuum would include, but not be limited to, programs for these students in schools attended by nonhandicapped students in each of the geographic areas served by the AIU. Placement decisions would be based only on the individual needs of each student.

Access to Course Offerings

Under Title IX, a school district may not provide any courses separately on the basis of sex or require or refuse participation in courses on the basis of sex. This prohibition includes health, physical education, industrial arts, business, vocational, technical, home economics, music, and adult education courses. Generally, grouping of students within physical education classes based on individual ability is permitted if objective standards of performance are used to measure such ability. Separation of students based on sex within physical education classes or activities is only permitted during contact sports (e.g., wrestling, football, basketball).

Students may not be automatically assigned to home economics or industrial arts classes on the basis of sex.

OCR investigated a complaint that Minerva Local School District (Ohio) discriminated against students on the basis of sex because only boys took industrial arts courses and only girls took home economics courses at a junior high school. OCR found that students were automatically assigned into either home economics or industrial arts courses on the basis of their sex. If a male wanted to take a home economics course or a female wanted to take an industrial arts course, it would be up to the student to initiate a change. However, students were not made aware that they could transfer into the other course. Accordingly, OCR determined that the district had violated Title IX because it had provided courses separately on the basis of sex. As a result of OCR's investigation, the district agreed that home economics and industrial arts courses would be conducted on a coeducational basis and that all seventh and eighth graders would be allowed to take both courses.

School districts may not segregate physical education courses on the basis of sex.

In a second complaint, the Jefferson Union High School District (California) assigned students to physical education courses based on the sex of the students. Boys were automatically assigned to a physical education class with a male instructor and girls were automatically assigned to a physical education class with a female instructor. Only a small number of physical education classes, such as archery, dance, swimming, badminton and volleyball, were

co-educational. OCR determined that the district had violated Title IX because it had provided courses separately on the basis of sex. Following a discussion of OCR's findings, the district agreed that physical education courses would be offered on a co-educational basis.

Program Accessibility

Section 504 requires school systems to make their programs accessible to handicapped persons. When the Section 504 regulation became effective on June 3, 1977, all new construction begun on or after that date, as well as alterations that could affect access to use of existing facilities, were required to be designed in conformance with the American National Standards Institute (ANSI) Standards A117.1-1961 (R 1971). However, on December 19, 1990, the Department of Education, along with many other Federal agencies, amended the Section 504 regulation to reference the Uniform Federal Accessibility Standards (UFAS) in place of ANSI. The effective date for this change was January 18, 1991.

A playground area was not accessible to students with handicaps.

OCR investigated a complaint that a playground area constructed in October 1990 at an elementary school in the Hazelton Area School District (Pennsylvania) was not accessible to students with handicaps. Because of a stone surface that is difficult for persons who use wheelchairs to traverse, 80 percent of the playground was not accessible. Areas containing picnic tables and swings also were not accessible.

The picnic tables themselves were not accessible because they were octagonal, with built-in benches encircling them. There also were no designated parking place(s) reserved for persons with handicaps in the parking lot near the playground. In addition, because a portable classroom obstructed the path, there was no accessible route from the parking lot to the walkway leading to the playground.

As a result of OCR's investigation the school district agreed to make the playground accessible.

The district agreed to take corrective action in accordance with UFAS to remedy these violations. The district agreed to provide designated parking spaces for persons with handicaps, as well as an accessible route from these parking spaces to the entrance of the playground. An accessible route would also be constructed connecting the entrance to the playground and the areas around the picnic tables and both sets of swings. The district agreed that at least one of the two picnic tables would be made accessible to persons who use wheelchairs.

Student Discipline

Title VI requires that discipline policies be applied in an even-handed manner to all students, regardless of race, color, or national origin.

OCR investigated a complaint that the Cleveland Heights-University Heights City School District (Ohio) discriminated against black students by subjecting them to more frequent and more severe disciplinary actions than white students. Black students comprised 61.7 percent of the district's enrollment but accounted for 90 percent of school suspensions.

Black students were disproportionately referred for disciplinary action for using profanity and for disorderly conduct.

OCR found that the school district's student disciplinary code gave teachers broad latitude in referring students for disciplinary action, particularly for subjective offenses such as disorderly conduct and use of profanity, which resulted in the disproportionate referral of black students. For example, of students referred for disorderly conduct, 85 percent were black and only 15 percent were non-minority students. Concerning the use of profanity, 21 of 22 students referred for discipline were black. In contrast, there was no racial pattern in the referral of students for objective offenses (e.g., cutting class).

In interviews with OCR, students, teachers, and administrators confirmed that, in incidents where black and white students engaged in the same misconduct, black students were more likely to be referred for disciplinary action, while classroom intervention techniques were generally used to address white students' misconduct.

OCR secured corrective action.

Following OCR's investigation, the district developed a system for monitoring disciplinary referrals at all of its schools to eliminate racial considerations. The district also agreed to provide in-service training to all staff involved with student discipline, including the use of classroom intervention techniques or other alternatives to referring students for disciplinary action.

Procedural Safeguards

A recipient is required to implement a system of procedural safeguards to ensure that parents or guardians of students with handicaps have an opportunity for an impartial hearing and review of the recipient's decisions concerning the evaluation and placement of their children. OCR investigated a complaint that the Illinois State Board of Education (ISBE) was not conducting hearings within a reasonable period of time. OCR found that, although ISBE had adopted a standard that due process decisions would be issued within 45 days after a request for a hearing was received, and its rules required that hearing officers convene a hearing within 15 days after notice of selection, these time frames were frequently exceeded. For example, in reviewing a sample of 23 cases, OCR found that an average of 59 calendar days elapsed between the date the hearing officer received notice of his/her selection and the date the hearing was convened. Also, OCR found that ISBE's system for tracking due process requests was unreliable.

As a result of OCR's investigation, ISBE agreed to correct these violations. Procedures were established to improve ISBE's system for tracking due process cases, and hearing officers are required to inform ISBE when they are unable to issue due process decisions within the 45-day timeline. ISBE will also provide in-service training for hearing officers on an annual basis that addresses the issue of timeliness.

Employment

Under Title VI, school systems that receive Federal financial aid where the primary purpose of such aid is to provide employment may not subject their employees or applicants for employment to discrimination on the basis of race, color, or national origin through their employment policies or practices in such areas as recruitment, hiring, promotions, terminations, or rates of pay or other forms of compensation. Where a primary objective of the Federal financial assistance is not to provide employment, OCR has jurisdiction under

Title VI to investigate allegations of discrimination in employment policies or practices if the discriminatory employment policies or practices would deny equality of educational opportunity to, or prevent nondiscriminatory treatment of, beneficiaries.

A school district's recruitment practices limited employment opportunities for black teachers.

OCR investigated a complaint that the Carrollton-Farmers Branch Independent School District (Texas) discriminated on the basis of race by failing to recruit blacks for teaching positions. OCR had jurisdiction over these allegations because discrimination in the recruitment of teachers would deny equal educational opportunity to students enrolled in the district. OCR's investigation found a significant disparity between black teachers included in the district's applicant hiring pool and their availability in the relevant labor market (Dallas-Ft. Worth). This disparity resulted from a number of recruitment practices that the district traditionally used in filling position vacancies. For example, nearly all new hires were recruited by "word-of-mouth" by a disproportionately white work force. Also, the district made few recruitment efforts at predominantly black colleges and universities. While Texas has eight predominantly black colleges and universities, only two were visited by recruitment teams during the 1988-1989 and 1989-1990 school years. In addition, recruitment materials, including brochures, publications, and a videotape, discouraged interest by depicting a nearly all-white school district and by omitting a nondiscriminatory employment policy statement. OCR concluded that the district was in violation of Title VI because its recruitment practices and procedures had resulted in limiting available black teachers from participating and benefitting from employment opportunities afforded by the district.

OCR obtained a corrective action plan that increased the number of black teachers in the district.

Subsequent to OCR's investigation, Carrollton-Farmers Branch took a number of actions to recruit black teachers. For example, in 1990-1991, one-third of all recruitment trips were made to predominantly black colleges and universities. During the past three years, the proportion of blacks on recruitment teams increased from 5 to 43 percent. Also, more than a third of colleges and universities receiving recruitment materials from the district were predominantly black. The district made a commitment to redesign its recruitment materials, including insertion of a nondiscriminatory policy statement. These actions have resulted in the recent increase of black teachers employed by the district.

Section 504 and the Individuals with Disabilities Education Act (IDEA)

During FY 1991, a number of school systems requested clarification of the requirements concerning elementary and secondary education under Section 504 and the IDEA. The IDEA is a grant statute and attaches specific conditions to the receipt of Federal funds. The regulations implementing Section 504 and the IDEA have significant similarities and differences. For example, three sections of the Section 504 regulation state that one means for recipients to comply with Section 504 with respect to those sections is to comply with the IDEA. OCR, therefore, sometimes must review recipients' activities in light of the IDEA.

OCR participated in several workshops during FY 1991 to provide guidance on the distinctions between Section 504 and the IDEA. For example, OCR participated in a conference on special education that was sponsored by the Arizona State Special Education Department. Approximately 200 representatives from school districts and beneficiaries attended the conference, where OCR conducted a training session on the similarities and differences between Section 504 and the IDEA. Similar workshops were conducted for Los Angeles County administrators of special education and for representatives from the Washington Office of Public Instruction and school districts throughout the State of Washington.

OCR's San Francisco regional office initiated an outreach mass mailing to provide information to over 70 school districts to assist them in understanding their obligations under Section 504. OCR provided each superintendent with a package containing a sample policy memorandum that clarified the school districts' responsibilities to students with handicaps under Section 504 and the IDEA, procedures for the evaluation and placement of students under Section 504, and the Section 504 regulation.

CHAPTER IV - OTHER POSTSECONDARY EDUCATION ISSUES

There are approximately 3,600 colleges and universities in the nation that receive Federal financial assistance and are, therefore, subject to the civil rights laws. During FY 1991, 26 percent of OCR's complaint receipts and 24 percent of its compliance review initiations involved postsecondary schools. The issues in these investigations concerned the obligation of recipient institutions to operate nondiscriminatory programs regarding the recruitment, admission, treatment, benefits, and services extended to students.

Aside from legal requirements, there is a compelling national interest in ensuring equal educational opportunities for all students on our campuses. If present trends continue, minorities and women will constitute 68 percent of new entrants to the work force by the year 2000. It is important to the nation's economic competitiveness and productivity that this portion of our future work force pursue advanced education in order to be prepared to function in an increasingly high technological society. The examples below illustrate OCR's compliance activities in postsecondary education.

Admissions

Under Section 504, qualified handicapped individuals may not be denied admission or subjected to discrimination based on their handicap. Also, a college or university may not make a preadmission inquiry to determine whether applicants are handicapped.

A law school denied admission to a qualified candidate because of her mental health history.

OCR received a complaint that the Thomas M. Cooley Law School (Michigan) denied admission to a candidate because of her history of depression. The Cooley Law School admits virtually all applicants who have an index score of 50 or above, which is based on undergraduate grades and the Law School Admissions Test (LSAT). The complainant had a 55 index score and, according to the Law School's Admissions Director and the Chairman of the Admissions Committee, would have been admitted if she had not indicated a mental health condition.

Because of her response on the application form, the candidate was required to submit information from her physician regarding her diagnosis, treatment, and prognosis. This imposed additional conditions on the complainant that were not placed on other law school applicants. Although the information submitted by her physician supported the complainant's application, the Admissions

Committee, whose members were without professional experience in the mental health area, determined the complainant unfit for law study.

As a result of OCR's investigation, the law school agreed to admit the student.

During the investigation, OCR also learned that the Cooley Law School asked applicants whether they took the LSAT under special conditions. This constituted an improper preadmission inquiry under Section 504.

OCR negotiated a settlement with the Thomas M. Cooley Law School in which the School agreed to admit the complainant. The Law School also removed from its application form questions regarding physical or mental conditions and whether applicants had taken the LSAT under special conditions.

Access to Course Offerings

A community college's advertisement for a basic automotive course indicated that it was limited to female students.

Title IX requires that courses be open to all students and may not be restricted or conducted separately on the basis of sex. A complaint was filed alleging that the Southeast Community College in Lincoln, Nebraska, restricted a non-credit automotive course to female students. The course was identified in the College's catalogue as Basic Car Care for Women and described as a "great mother/daughter activity." OCR's investigation determined that one male had enrolled in the class during a quarter and thus the College did not actually restrict enrollment despite the course announcement. However, the listing and description of the course violated the Title IX regulation, which does not permit a school to suggest, by text or illustration, that students are treated differently.

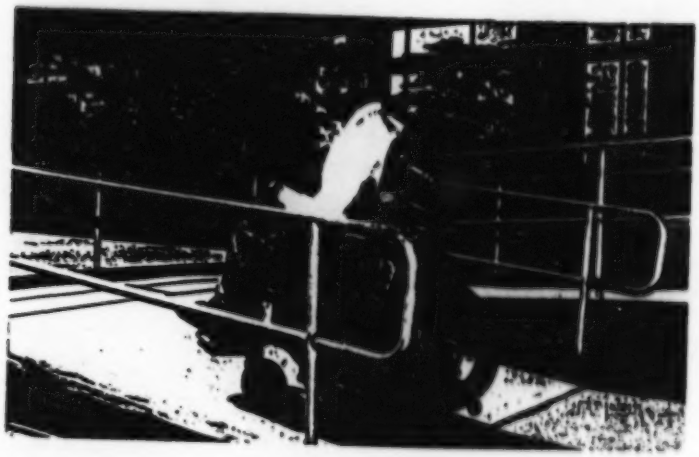
In addition, OCR's investigation showed that the College's other automotive technology classes consisted of all males. Because of this situation and the virtual absence of men in Basic Car Care for Women, the College was required to determine whether the disproportion in enrollment resulted from discriminatory counseling or from the use of discriminatory counseling or appraisal materials.

OCR secured corrective action.

Southeast agreed to change the title and description of the Basic Car Care course so that there is no implication that it is restricted to women. It also made a commitment to ensure that the substantially disproportionate number of individuals of one sex in a class is not the result of discrimination on the basis of sex in counseling or appraisal materials.

Program Accessibility

Under Section 504, a qualified handicapped person may not be excluded from an education program because the institution's facilities are inaccessible to or unusable by individuals with handicaps.



A concert hall at a university was inaccessible to persons using wheelchairs.

During its investigation of a complaint against Yale University (Connecticut), OCR found that a building housing a concert hall was inaccessible. The concert hall, which is on the second level of a four-story building, was inaccessible because of stairs and the lack of seating locations for persons who use wheelchairs. The entrance to the building also had stairs and a step at the entrance threshold. In addition, restrooms for men and women were located at the basement level, reachable only by stairs, and all toilet stalls were inaccessible.

As a result of OCR's investigation, Yale is installing an elevator in the building and is undertaking other alterations needed to make the building, the second-floor concert hall, and the restrooms accessible to persons with mobility impairments. In the interim, Yale has relocated performances to accessible buildings.

In a corrective action plan, the university agreed to make alterations to the building.

During FY 1991, OCR issued guidance for conducting program accessibility investigations at postsecondary education institutions in accordance with Section 504 and the Uniform Federal Accessibility Standards. Although the guidance was directed to postsecondary programs, the general principles were applicable to all recipient programs.

Housing

Under Title VI, colleges and universities must make all facilities available to students in a nondiscriminatory manner. This extends to institution-owned and institution-supported housing. OCR received a complaint alleging that Lincoln College (Illinois) assigned dormitory roommates based on their race, in violation of Title VI.

Students were assigned to college dormitory rooms based on their race.

In the 1990-91 school year, 78 percent of first year black males and 63 percent of first year black female students were assigned a black roommate. The pairing of black roommates well exceeded the statistical likelihood of this happening by chance, as black students comprised only 12 percent of Lincoln's enrollment. Despite its written policies, which were nondiscriminatory on their face, Lincoln admitted during OCR's investigation that race was a factor in assigning students to on-campus housing when all factors for assigning students were equal.

OCR secured corrective action.

Following OCR's investigative findings, Lincoln submitted a corrective action plan. The College agreed to discontinue using race in making roommate assignments, and subsequent monitoring by OCR revealed that Lincoln is now making housing assignments without regard to a student's race, color, or national origin.

Auxiliary Aids

Section 504 requires that auxiliary aids be provided and academic adjustments made to ensure handicapped students are not excluded from participation in the programs and activities of educational institutions that receive Federal financial assistance.

OCR received a complaint that Scott Community College, which is part of the Eastern Iowa Community College District, would not allow the complainant, a learning disabled student, to use a tape recorder in an Introduction to Literature course. OCR's investigation determined that the instructor felt tape recorders were disruptive in the classroom.

A college failed to make academic adjustments in test taking for handicapped students.

In investigating the complaint, OCR found that the College's Learning Disabilities Specialist (LDS) had previously determined that a tape recorder was necessary for this student. In addition, OCR confirmed that the College also ignored recommendations of the LDS regarding modifications in test taking for two other students. One of the students, who was enrolled in a medical technology course, suffers from a visual dysfunction and it had been

recommended that she not be tested in the "fill-in-the-circle" testing format. The other student had a learning disability based on poor reading ability and perceptual problems and it had been recommended that the LDS administer the student's test in a psychology course.

OCR secured corrective action.

As a result of these findings, Scott Community College developed new procedures to ensure that recommendations for auxiliary aids and modifications made by the LDS are carried out. Also, the College made commitments to evaluate students so that test results will reflect actual performance rather than a student's disability, including impaired sensory skills.

Sexual Harassment

Sexual harassment that constitutes different treatment based on sex or otherwise establishes an intimidating, hostile, or offensive environment that interferes with the ability to benefit from the recipient's program is prohibited under Title IX. OCR received a complaint alleging that a professor at Southern Oregon State College discriminated against female students by subjecting them to sexual harassment.

Female students were subjected to derogatory sexual remarks made by a college professor.

Seven students enrolled in a course taught by the professor met informally with College officials and indicated that the professor made repeated derogatory and sexist remarks about female students. After an internal investigation was conducted, Southern Oregon State concluded that the professor made inappropriate comments in class that were insensitive to women, but that the remarks did not constitute sex discrimination.

OCR's investigation confirmed the College's findings that female students were subjected to derogatory comments over a long time period. However, OCR determined this differential treatment violated Title IX.

Several students also had filed grievances with the College. The Title IX regulation requires an institution to adopt grievance procedures that provide for prompt and equitable resolution of complaints. While Southern Oregon had in place procedures that appeared to meet this requirement, they were not put into practice in this case. It took more than seven months for the College to reach a determination in its internal investigation. Furthermore, no written decision was issued on the question of sex discrimination, the College failed to address the issues contained in the grievances,

an inappropriate standard for assessing sex discrimination was applied, and the students received no notice of appeal rights. Therefore, OCR determined the College's grievance procedures did not comply with Title IX requirements.

OCR obtained corrective action, and a copy of OCR's letter of findings was placed in the professor's official personnel file.

A comprehensive settlement was negotiated with the College. The professor received formal notification that his use of derogatory comments based on sex constituted sex discrimination in violation of the law. The notification included a copy of OCR's letter of findings, which also was placed in the professor's official personnel file. The College agreed to provide in-service training on sex discrimination to the professor. Students involved in the investigation were offered the option of having a clarifying letter attached to their grade transcript or a letter provided to them for future use. The College also agreed to adopt and publish new grievance procedures that provide for prompt and equitable resolution of student complaints alleging sex discrimination.

Employment

Section 504 prohibits a college or university from discriminating against a qualified handicapped person in employment. A former employee of the University of Medicine and Dentistry of New Jersey alleged that she was forced to resign after notifying her supervisor of pending surgery and possible need for leave. OCR found that the employee was handicapped, that she was qualified for the position from which she was terminated, and that the surgery was related to her handicapping condition.

A university employee was forced to resign her job because of her need for medical leave.

During the investigation, the University contended that the employee, a full-time temporary Postdoctoral Research Associate, was terminated for three reasons: inadequate job performance; failure to follow procedures for requesting leave; and ineligibility for employment benefits. However, OCR found these reasons to be pretextual. The University's personnel records indicated the employee was terminated because of "medical problems, sick time;" there was no evidence the employee's performance was a factor. A review of the University's Employee Handbook showed that the employee had followed applicable procedures for requesting leave. Also, OCR found that the employee, having satisfactorily completed her probationary period, was eligible for benefits such as paid or unpaid sick leave.

After OCR's investigation, the university agreed to a monetary settlement with the employee.

Accordingly, OCR concluded that the employee was forced to resign after she revealed her need for surgery related to her handicapping condition and possible need for a recovery period. Following discussion of the findings, the University agreed on a monetary settlement with the employee.

In investigating this complaint, OCR also found that the University of Medicine and Dentistry made inquiries regarding whether an applicant for employment was handicapped. These inquiries appeared on the applicant's employment form and on a telephone reference form, which solicits information from the applicant's former employer. Section 504 does not permit an employer to make pre- employment inquiries regarding whether an applicant is handicapped, except when such inquiries are to assist in remedying discrimination or as part of a voluntary affirmative action program to promote efforts to hire individuals who are handicapped. The University agreed to delete the inquiries from both forms.

CHAPTER V - ISSUES INVOLVING OTHER TYPES OF INSTITUTIONS

The Department of Education extends financial assistance to institutions other than school districts and colleges and universities. These additional recipients include state and local vocational rehabilitation agencies, proprietary schools, correctional institutions, libraries, and museums. As recipients of Federal funds, these institutions are covered by the civil rights laws.

Vocational Rehabilitation Services

OCR received a complaint that the California Department of Rehabilitation discriminated on the bases of handicap and age in denying services to a client who sought funding to prepare for employment as a sculptor or broadcaster.

Under Section 504, a rehabilitation agency may consider a client's medical condition in determining appropriate employment activities for clients on a case-by-case basis. The law does not permit automatic disqualification of activities because a client has a particular disability. In this case, OCR determined that the California

Department of Rehabilitation considered the client's proposals on an individual basis by engaging a consultant to prepare a market feasibility report. This report concluded that the client's proposals for self-employment were not economically feasible. Since there was no evidence that the client's handicap affected consideration of his

proposal, OCR determined there had been no violation of Section 504.

A vocational rehabilitation agency denied services based on a client's age.

However, OCR's investigation substantiated the claim of age discrimination. The client received a letter from the California Department of Rehabilitation that specifically identified the client's age as one factor in rejecting his proposals. This constituted a violation of the Age Discrimination Act, since the agency was unable to show that age was a factor necessary to a statutory objective of the rehabilitation program.

OCR secured corrective action.

Following discussion of OCR's findings, the California Department of Rehabilitation notified its officials of the legal requirements to prevent improper consideration of age in establishing future eligibility for rehabilitation services. Also, the agency indicated that the client may request a hearing before the California Rehabilitation Appeals Board, which would review his proposals for self-employment. This hearing must be conducted in compliance with the Age Discrimination Act.

Student Placement

Under Title VI, there must be nondiscriminatory treatment of students in all aspects of an institution's educational program. This includes educational-related activities that are performed outside the classroom.

A student, a native of Haiti, filed a complaint with OCR alleging that the Ultrasound Diagnostic School (Massachusetts) discriminated against her because of her race and national origin. The student claimed that the school failed to place her in a required clinical internship.

The school operates a one-year medical ultrasound training program. The curriculum requires a three-month clinical internship to afford students practical experience in a hospital or clinic. The internship consists of six weeks of abdominal training and six weeks of obstetrical/gynecological (OB/GYN) training.

A medical technician training program failed to provide a clinical internship because of a student's race and national origin.

The Ultrasound School placed the student in a clinical internship for abdominal training, which she successfully completed at a veterans' hospital. However, the student was never given an OB/GYN placement. Ultrasound maintained that the student was difficult to place because of poor attendance during her previous placement, language problems, and her inability to drive.

OCR considered whether these were legitimate, nondiscriminatory reasons. OCR found no evidence of an attendance problem during the student's first internship. She was both punctual and consistently present at her work station. The facts also showed the student was a licensed driver who had used an automobile during her training at Ultrasound. This contradicted the school's contention that the student could only be placed at sites close to public transportation. OCR determined the student's language proficiency did not affect job performance in her previous internship. Also, until OCR's investigation, the school never indicated that language proficiency was a problem or reason for the delay in placing her in an OB/GYN clinical internship. Accordingly, OCR found that Ultrasound's explanations for its actions were pretextual.

Based on OCR's findings, the school agreed to provide the internship to the student.

The case was resolved by Ultrasound agreeing to provide the student with OB/GYN training at no additional cost. Also, Ultrasound adopted new policies and procedures for prompt and adequate placement of all students in clinical internships.

Sexual Harassment

A student was sexually harassed in a truck driver training program.

OCR investigated a Title IX complaint that a student was sexually harassed by instructors and other students while attending PRO DRIVE, a proprietary school in Wisconsin that offered a six-week truck driver training program. The student withdrew from the program because she felt physically threatened after receiving an explicit sexual note from an instructor.

OCR's investigation established that male instructors and students made numerous offensive sexual remarks to female students. Students and instructors testified that sexual harassment of female students was pervasive, especially in the non-classroom parts of the course. Instructors interviewed during the investigation admitted that they were aware of the sexual comments but did not attempt to stop the practice. The evidence also showed that two other PRO DRIVE faculty were involved in the incident regarding the threatening note.

After the student informed school officials about the sexual harassment, PRO DRIVE failed to make a proper investigation. The school made no attempt to identify and discipline those involved in the incidents regarding the complainant and failed to respond to sexual harassment complaints made by other students.

Thus, PRO DRIVE treated female students differently on the basis of their sex and did not meet its affirmative duty to take prompt

corrective action after becoming aware of sexual harassment, thereby condoning a sexually hostile environment. Also, the school did not have a policy on sexual harassment and had not adopted grievance procedures, as required by Title IX.

OCR secured corrective action.

A comprehensive settlement was negotiated in which PRO DRIVE agreed to conduct in-service training for current and new staff to prevent sexual harassment. Students will be informed of the company's prohibition against sexual harassment and disciplinary sanctions. PRO DRIVE also developed new grievance procedures for the prompt and equitable resolution of sex discrimination complaints. In addition, the complainant was offered the opportunity to retake the course.

FINAL REMARKS

Effective enforcement of the civil rights laws allows OCR to fulfill a national commitment-ensuring that the doors of equal educational opportunity are open to all students. Accomplishment of this mission is complicated by the lack of adequate fiscal and staff resources needed to operate an effective civil rights compliance program. As this Report has documented, these problems are compounded by the near doubling of the number of discrimination complaints filed with OCR in the past four years. A systematic approach for directing compliance and enforcement efforts is, therefore, critical to the functioning of this office.

In FY 1991, OCR introduced and implemented, for the first time, a major strategic planning effort - the National Enforcement Strategy. The NES provided the framework for most of OCR's significant accomplishments in FY 1991 and proved that careful planning could maximize the impact of our enforcement capabilities.

FY 1991 was the start-up year for the NES. The experience gained in the first year implementation of the NES is being used to ensure that more can be accomplished in FY 1992. Several of the high priority issues focused on in 1991 are being carried over, and additional levels of activity are anticipated in FY 1992. Both the number of compliance reviews and the proportion devoted to NES issues will increase substantially in FY 1992, despite an anticipated new record in the complaint workload. We also expect to increase technical assistance outreach activities. Most importantly, the policy development projects being undertaken will direct future investigative activities, as well as clarify the rights and responsibilities of recipients and the public alike.

In the upcoming fiscal year, OCR also faces a new challenge as the Office that has been designated responsibility for enforcing that part of Title II of the Americans with Disabilities Act that prohibits discrimination on the basis of disability in public elementary and secondary educational systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentisty, nursing, and other health-related schools), and public libraries. Title II became effective in January 1992.

In 1991, OCR sought to send the strongest possible signal that education is the door to opportunity for all Americans. For 1992 and for the future, OCR seeks the cooperation of the Congress, parents, school officials, administrators, and other members of the community in ensuring that each student has the opportunity to develop his or her talents to the fullest. By working together, we can make good on a fundamental promise long held out by this nation. We can make a positive difference.

SECRETARY'S COMMENTS

I congratulate the Office for Civil Rights on the achievements reflected in its FY 1991 Annual Report to Congress. The Report details a largely unsung record of progress in improving OCR's efficiency in discharging its important civil rights enforcement responsibilities.

As the issues of civil rights enforcement become more complex, the Nation ever more diverse, the challenge we face, within our schools and elsewhere, is promote not only voluntary compliace with civil righs laws, but genuine rdespect for the value of every person. We also need to foster public support for effective enforcement of civil rights laws when violations occur. And we need to accomplished these tasks without embroiling the Federal government in micromanaging or second guessing reasonable education decisions of local educators.

Access and excellence are the Department of Education's mission. The National Goals, and the AMERICA 2000 strategy for meeting them, are not for a segment of this country, but for all Americans. Success will come from a national effort, not merely a federal effort. Let's all work to keep the promise of the American dream to all our children.

Lamar Alexander

Lamar Alexander

APPENDIX A
REGIONAL CIVIL RIGHTS OFFICES

Region I
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Office for Civil Rights, Regiòn I
U.S. Department of Education
J.W. McCormack Post Office and
Courthouse, Room 222, 01-0061
Boston, MA 02109-4557
(617) 223-9662; TDD (617) 223-9695

Region II
New Jersey, New York, Puerto Rico, Virgin Islands

Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza, 33rd Floor
Room 33-130, 02-1010
New York, NY 10278-0082
(212) 264-5180; TDD (212) 264-9464

Region III
Delaware, District of Columbia, Maryland,
Pennsylvania, Virginia, West Virginia

Office for Civil Rights, Region III
U.S. Department of Education
3535 Market Street
Room 6300, 03-2010
Philadelphia, PA 19104-3326
(215) 596-6795; TDD (215) 596-6794

Region IV
Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee

Office for Civil Rights, Region IV
U.S. Department of Education
Post Office Box 2048, 04-3010
101 Marietta Tower
Suite 2702
Atlanta, GA 30301-2048
(404) 331-2954; TDD (404) 331-7236

Region V
Illinois, Indiania, Michigan, Minnesota, Ohio, Wisconsin

Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street
Room 700C, 05-4010
Chicago, IL 60605-1202
(312) 886-3456; TDD (312) 353-2540

Region VI
Arkansas, Louisiana, Mississippi, Oklahoma, Texas

Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building
Suite 2260, 06-5010
Dallas, TX 75202-9998
(214) 767-3959; TDD (214) 767-3639

Region VII
Iowa, Kansas, Kentucky, Missouri, Nebraska

Office for Civil Rights, Region VII
U.S. Department of Education
10220 North Executive Hills Boulevard
8th Floor, 07-6010
Kansas City, MO 64153-1367
(816) 891-8026; TDD (816) 374-6461

Region VIII
Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Office for Civil Rights, Region VIII
U.S. Department of Education
Federal Building, Suite 310, 08-7010
1244 Speer Boulevard
Denver, CO 80204-3582
(303) 844-5695; TDD (303) 844-3417

Region IX
California

Office for Civil Rights, Region IX
U.S. Department of Education
Old Federal Building
50 United Nations Plaza
Room 239, 09-8010
San Francisco, CA 94102-4102
(415) 556-7000; TDD (415) 556-6806

Region X
Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territory of the Pacific Islands

Office for Civil Rights, Region X
U.S. Department of Education
915 Second Avenue
Room 3310, 10-9010
Seattle, WA 98174-1099
(206) 553-6811; TDD (206) 553-6419

APPENDIX B
OCR PUBLICATIONS

Contact your regional civil rights office (see Appendix A for listing) to obtain any of the publications listed below:

General

- OCR's 1991 Annual Report to Congress
- OCR's 1990 Annual Report to Congress
- ED Facts; Information About the OCR
- Notice of Nondiscrimination
- How to File a Discrimination Complaint
- Federal Regulations, Vocational Education Program Guidelines (March 21, 1979)
- Vocational Education and Civil Rights
- The Guidance Counselor's Role in Ensuring Equal Educational Opportunity
- Nondiscrimination in Employment Practices in Education

Title VI of the Civil Rights Act of 1964 (Title VI)

- Title VI Regulations, Federal Register, May 9, 1980
- Education and Title VI (Available in English and Spanish)
- Student Assignment in Elementary and Secondary Schools
- Magnet Schools: Promoting Equal Opportunity and Quality Education
- Historically Black Colleges & Universities and Higher Education Desegregation

Title IX of the Education Amendments of 1972 (Title IX)

- Title IX Regulations, Federal Register, May 9, 1980
- Federal Regulations, Policy Interpretation on Title IX Intercollegiate Athletics, December 1979
- Title IX Grievance Procedures: An Introductory Manual
- Title IX and Sex Discrimination (Available in English and Spanish)
- Title IX Athletics Manual (Includes Regulations, Policy Interpretation, & OCR Fact Sheet)
- Equal Opportunity in Intercollegiate Athletics
- Student Assignment in Elementary & Secondary Schools
- Sexual Harassment — It's Not Academic
- Teenage Pregnancy and Parenthood Issues Under Title IX

Title VI and Title IX

What Schools Can Do to Improve Math and Science Achievement by Minority and Female Students

Section 504 of the Rehabilitation Act of 1973 (Section 504)

Section 504 Regulations, Federal Register, May 9, 1980 (Includes December 1990 Amendment)
Auxiliary Aids & Services for Postsecondary Students With Handicaps
Discipline of Handicapped Students in Elementary and Secondary Schools
Free and Appropriate Public Education for Students with Handicaps
Placement of School Children with AIDS
Student Placement in Elementary & Secondary Schools
Civil Rights of Students with Hidden Disabilities
Rights of Individuals with Handicaps under Federal Law (English and Spanish Versions available)

Age Discrimination Act of 1975

Federal Regulations, Age Discrimination Act of 1975

Americans with Disabilities Act

Department of Justice pamphlet on Americans with Disabilities Act